Supreme Court, U.S.
FILED

01166 MAY 2 - 2001

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No.

In the
Supreme Court of the United States

GABRIEL SEYMOUR and ROBERT REID,

Petitioners,

vs.

STATE OF CONNECTICUT ELECTIONS ENFORCEMENT COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

DAVID R. SCHAEFER*
BRENNER, SALTZMAN & WALLMAN, LLP
Attorneys for Petitioners
271 Whitney Avenue
New Haven, CT 06507-1746
(203) 772-2600

WHITNEY NORTH SEYMOUR, JR.
PETER JAMES CLINES
LANDY & SEYMOUR
363 Seventh Avenue, Room 1300
New York, NY 10001
(212) 629-0590
Of Counsel

**Counsel of Record*

QUESTIONS PRESENTED FOR REVIEW

1. Did the Connecticut Supreme Court unreasonably restrict the holding of this Court in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) to First Amendment protection only for anonymous pamphleteering relating to referenda and other issue-based ballot measures and not for political leaflets distributed during candidate political elections?

2. Is Section 9-333w of the General Statutes of Connecticut narrowly tailored to serve compelling state interests?

3. Even if persons who spend money on behalf of candidates for elective office (including the candidates themselves) may ordinarily be compelled to disclose their identities, may they be compelled to do so when the expenditures are *de minimis*?

4. Did the public disclosure by the Connecticut Elections Enforcement Commission of citizen complaints alleging violations of state law by candidates for elective office substantially violate the candidates' First, Fifth and Fourteenth Amendment rights, when there was no agency finding of probable cause and no agency hearing scheduled or held until after Election Day?

PARTIES TO PROCEEDING

The parties to this proceeding are all named in the caption.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	4
Proceedings Below	4
Statement of Facts	5
Connecticut Elections Enforcement Commission	7
Raising of Federal Questions Below	8
The Connecticut Supreme Court Majority Opinion	9
The Connecticut Supreme Court Minority Opinion	10
REASONS FOR ALLOWANCE OF WRIT	10
ARGUMENT	
POINT I	
SECTION 9-333w(a) IS VOID AS OVERBROAD UNDER THE FIRST AMENDMENT	13
1. The Statute is Overbroad Because It Applies to Expenditures by the Candidates Themselves	14
2. The Statute Applies to Negligible Expenditures	14
3. The Statute Applies to Non-Organization Candidates Subject to Harassment	15
4. The Statute Applies to Speech That Is Not Even Arguably False	15

POINT II

DUE PROCESS BENEFITS THE ELECTORATE AS WELL AS THE CANDIDATES 15

CONCLUSION 16

APPENDIX A

CONNECTICUT SUPREME COURT, MAJORITY OPINION A-1

CONNECTICUT SUPREME COURT, MINORITY OPINION A-28

APPENDIX B

ORDER DENYING REARGUMENT A-33

APPENDIX C

CONNECTICUT SUPERIOR COURT OPINION A-34

APPENDIX D

STATE ELECTIONS ENFORCEMENT COMMISSION FINAL DECISION A-41

APPENDIX E

TWO PRESS RELEASES (SUBJECT OF EEC ENFORCEMENT PROCEEDINGS) A-47, A-50

TABLE OF AUTHORITIES

	Page(s)
Cases:	
Broadrick v. Oklahoma, 413 U.S. 601 (1973)	13n.3
Buckley v. Valeo, 424 U.S. 1 (1976)	7, 13, 15
McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)	*passim*
Morse v. Republican Party of Va., 517 U.S. 186 (1996)	13, 13n.3
Seymour v. Elections Enforcement Commission, 255 Conn. 78 (2000)	*passim*
Statutes and Regulations:	
28 U.S.C. § 1257(i)	2
Connecticut General Statutes § 9-333w	*passim*
Connecticut General Statutes § 9-7(a)	7, 10
Connecticut General Statutes § 9-7(b)	7, 10
Supreme Court Rule 10(c)	2
United States Constitution:	
AMENDMENT I	3
AMENDMENT V	3
AMENDMENT XIV, Section 1	3

OPINIONS BELOW

The opinion of the State of Connecticut Supreme Court was handed down on December 19, 2000, and is reported as *Gabriel Seymour, et al. v. Elections Enforcement Commission*, 255 Conn. 78 (2000), 2000 WL 1806504 (Conn.). (A-1)

The Order denying petitioners' motion for reargument was entered on February 7, 2001, in the Connecticut Supreme Court under docket number SC 16167, and is unreported. A copy is reproduced in the Appendix. (A-33)

The decision of the Connecticut Superior Court affirming the administrative decision of the respondent Connecticut Elections Enforcement Commission was entered on December 16, 1998, under docket number CV 98 0579752, and is reported unofficially at 1998 WL 914364 (Conn. Super.). A copy is reproduced in the Appendix. (A-34)

The final administrative decision of the State Elections Enforcement Commission was filed on March 18, 1998, under File No. 97-252 and is reproduced in the Appendix. (A-41)

Also reproduced in the Appendix are the two press releases that formed the basis for the Commission's proceeding and subsequent appeals. (A-47 and A-50)

JURISDICTION

This petition is submitted pursuant to Supreme Court Rule 10(c) on the ground that the court of last resort of the State of Connecticut has decided important federal questions in a way that conflicts with relevant decisions of this Court.

On December 19, 2000 a closely-divided Supreme Court of Connecticut affirmed the decision of the respondent State Elections Enforcement Commission and upheld the constitutionality of a state statute challenged by petitioners as an abridgement of their right to free speech (Connecticut General Statutes §9-333w) and agency procedures that violated their federal free speech and due process rights. The order of the Supreme Court of Connecticut denying petitioners' motion for rehearing was entered on February 7, 2001. This petition is filed within 90 days of that order.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(i). Petitioners seek review by this Court of the final judgment rendered by the highest court of the State of Connecticut in which the validity of a statute of that state was and is drawn into question on the ground of its being repugnant to the Constitution of the United States (free speech), and where a right and privilege was and is specially claimed under the Constitution of the United States (free speech and due process).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant provisions of the United States Constitution involved in this case are as follows:

AMENDMENT I

Congress shall make no law . . . abridging the freedom of speech. . . .

AMENDMENT V

No person shall be . . . deprived of life, liberty, or property, without due process of law. . . .

AMENDMENT XIV

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The provisions of the Connecticut statute whose constitutionality is challenged in this case is as follows:

GENERAL STATUTES OF CONNECTICUT TITLE 9. ELECTIONS

Sec. 9-333w. Political advertising.

(a) No individual shall make or incur any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, and no candidate or committee shall make or incur any expenditure for any written, typed or other printed communication which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or solicits funds to benefit any political party or committee unless such communication bears upon its face the words "paid for by" and the following: (1) In the case of such an individual, the name and address of such individual; (2) in the case of a committee other than a party committee, the name of the

committee and its campaign treasurer; or (3) in the case of a party committee, the name of the committee. . . .

STATEMENT OF THE CASE

This case challenges the validity of a Connecticut political campaign literature disclosure statute. Petitioners argue that the state statute is repugnant to the free speech provisions of the U.S. Constitution. The decision of the Connecticut Supreme Court upholding the statute directly conflicts with this Court's decision in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), and severely narrows its application.

The petition also challenges the state agency's deprivation of petitioners' free speech and due process rights by publicizing citizen complaints of alleged election law violations before any agency hearing on the merits or any finding of probable cause.

Proceedings Below

Petitioners, first-time candidates for local office in a 1997 municipal election, were found by the respondent, the Connecticut State Elections Enforcement Commission ("Commission"), to be in "technical" violation of Conn. Gen. Stat. § 9-333w ("the statute"), because they failed to place the words "paid for by," followed by their names and addresses, on two press releases they had circulated to local newspapers. The trial court affirmed the Commission's finding that petitioners had violated the campaign disclosure statutes and dismissed their appeal. Petitioners then appealed to the Connecticut Appellate Court, where the appeal was administratively transferred to the Connecticut Supreme Court, the highest Court in the State. After oral argument and briefing by the parties and by the Connecticut Civil Liberties Union Foundation as *amicus curiae* in support of petitioners, the Connecticut Supreme Court, in a 3-2 decision, affirmed the judgment of the trial court. *Seymour v. Elections Enforcement Commission*, 255 Conn. 78 (2000). In doing so, the majority narrowly circumscribed the scope and application of this Court's First Amendment decision in *McIntyre*.

Statement of Facts

Falls Village, Connecticut, is a small rural municipality located in the Town of Canaan, incorporated in 1739. The town is located in Litchfield County beside the Housatonic River in the foothills of the Berkshire Mountains. The town's population is 1,052, the second smallest town in the State of Connecticut.

In keeping with the traditional New England form of government, legislative authority for Falls Village is vested in the Town Meeting. Town affairs are administered by a three-person Board of Selectmen. Fiscal affairs are overseen by a Board of Finance. The town has local ordinances, but no charter. The Town of Canaan is in the 63rd Assembly District; the 30th State Senatorial District, with 14 other towns; and the 6th Congressional District. The Board of Selectmen consists of three elected members who serve two-year terms, one of whom by law must represent the minority party. As of June 30, 2000, Falls Village had 555 enrolled voters: 172 Democrats, 274 Republicans, 219 Unaffiliated, and 1 Other.

In 1997, petitioners — who had never before run for elective public office — were asked by a group of registered Republicans seeking a change in the town leadership, to run for the positions of First Selectman and Members of the Board of Selectmen, challenging the candidates endorsed by the town's official Republican party organization. During the election campaign, petitioners prepared two platform statements which petitioner Seymour typed on a personal computer and faxed to local newspapers with the intention that the statements be published. Although the press releases bore both of the plaintiffs' names and telephone numbers, as well as Seymour's fax number, they did not contain any indication of who had paid the minimal expenses for their preparation (*i.e.*, paper and faxing).[1]

As the election campaign moved into high gear in September 1997, individual organization members of the incumbent

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[1] The press releases are reproduced in the Appendix at A-47 and A-50.

Democrat and Republican parties filed complaints with the respondent State Elections Enforcement Commission alleging various technical violations of the state's election law disclosure requirements against the challengers, including the absence of "paid for by" attributions on the two press statements. The complaints were used as major campaign strategic attack weapons by the supporters of the party organization nominees against petitioners and their fellow reformers. The Commission's public disclosure of the citizen complaints against petitioners produced intense adverse publicity in the local press on as-yet unproven charges of election law violations, most of which were later dismissed or discontinued.

Two months after the election, on January 14, 1998, a Commission hearing officer conducted a contested evidentiary hearing on the complaints. A report was issued on March 3, 1998, finding that the petitioners' failure to list the identity and address of the paying party accompanied by the words "paid for by" on their campaign platform press releases constituted a "technical" violation of Conn. Gen. Stat. § 9-333w. The full Commission then adopted the hearing officer's report on March 18, 1998 — six months after the first publicizing of the complaint in the local press — and ordered the petitioners henceforth to comply with the statute. No penalties were imposed.

In the Connecticut Supreme Court, petitioners challenged the Commission's decision on the following constitutional grounds: (1) *free speech* challenge to the mandatory election law disclosure statute, both as applied and on its face, due to its broad application to every election in the state, from local school boards to the Governor and General Assembly; (2) *free speech* and *due process* challenge to the Commission's pre-election public disclosure of complaints against candidates, combined with a wholly unjustifiable delay in adjudication by the Commission until after election day, when the damage to the candidates had already been done; and (3) *separation of powers* challenge under the State Constitution to the appointment of the commissioners by the political leaders of both major parties in both houses of the legislature, assuring

protection of political "insiders" against citizen challengers to the status quo. Only the first two grounds (free speech and due process) are presented here for review by this Court under the Fourteenth Amendment.

Connecticut Elections Enforcement Commission

The respondent Connecticut Elections Enforcement Commission is a law enforcement agency with the power to impose penalties on violators and to seek judicial enforcement of its orders. (General Statutes Section 9-7(b)) Four of the five members of the EEC are appointed by officers of the Legislature: the President Pro Tem and Minority Leader of the Senate, and the Speaker and Minority Leader of the House. (Section 9-7(a)) The Governor appoints only one member to the Commission, who is outvoted 4-to-1. The Governor's appointee is expressly prohibited from affiliation with any political party.

Though the petitioners do not here raise their state law separation of powers argument, they wish nevertheless to explain how the state's executive and legislative branches interact in the nature and functioning of the Commission. The explanation is necessary to a clear understanding of why the federal constitutional issues, which the petitioners do raise, are important.

The make-up of the Connecticut Commission is similar to the original make-up of the Federal Election Commission, which was declared unconstitutional by the U.S. Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976). The Supreme Court found that the legislative appointment of the FEC violated the Separation of Powers:

> The Commission's enforcement power, exemplified by its discretionary power to seek judicial relief, is authority that cannot possibly be regarded as merely in aid of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law, and it is to the President, and not to the Congress, that the Constitution entrusts the responsibility to "take care that the Laws be faithfully executed." Art. II, § 3.

(*Id.* at p. 138)

Separation of powers is not a theoretical academic question. By assuring that all incumbent Members of the Legislature will be represented on the Connecticut Elections Enforcement Commission through appointments of Commissioners by their respective Republican and Democratic legislative leaders, the legislators have the built-in protection of a cooperative public agency that will prosecute trivial and technical enforcement actions against challengers to intimidate and harass them.

Most local boards of election in this country are staffed by political party loyalists who serve as eyes and ears for party officials and incumbent officeholders to alert them to signs of pre-primary and pre-election activities by potential opposition candidates. In some states this partisanship goes further, and uses the control of election machinery to create obstacles for would-be challengers through such measures as invalidating nominating petitions on procedural technicalities. In Connecticut, creation of a Legislature-dominated Elections Enforcement Commission has added a sophisticated layer of incumbent protection by facilitating the filing and publicizing of minor technical violations of the election law brought against citizen activists seeking to challenge entrenched local elected officials, such as occurred here. Legislative domination and control of the EEC has thereby undermined the democratic process by supporting local political organizations in the enforcement of complaints of technical violations of the election laws against challengers in order to intimidate them and other potential citizen activists from challenging the regular party organizations' candidates.

Raising of Federal Questions Below

The federal questions sought to be reviewed here were the principal subjects of both the 3-member majority opinion and the 2-member minority opinion in the Connecticut Supreme Court. They were initially raised at the very outset of the administrative proceeding before the state agency in 1997 when the question of disclosure was first raised. Petitioner Seymour

wrote to the respondent's staff attorney that the use of the disclosure statute was:

> . . . the equivalent of pre-publication censorship, preventing the free expression of opposing political views and impairing the right of citizens to assemble peaceably to challenge the existing political structure.
>
> These are cherished constitutional rights to which citizens of Falls Village have been publicly committed since 1774, two years before the Declaration of Independence, and Bob Reid and I are determined to preserve them at all costs.

(R42, Ex. 16 *id.* p. 5)

The Connecticut Supreme Court Majority Opinion

The opening sentence of the majority opinion of the Connecticut Supreme Court in *Seymour v. Elections Enforcement Commission*, 255 Conn. 78 (at page 80) (2000), acknowledges that the issues of constitutionality are at the core of this case:

> This case raises important questions regarding the constitutionality of Connecticut's political advertising disclosure laws and the commission created to enforce them.

The majority then describes the constitutional issues as follows (at pages 82-83):

> The plaintiffs' appeal from the judgment of the trial court raises the following issues: (1) whether the disclosure requirements of § *9-333w* violate the first and fourteenth amendments to the United States constitution, thereby rendering the statute void and unenforceable; (2) whether the alleged delay of any hearing or decision by the commission until after the election, coupled with the alleged assertions, by the commission, of the statutory violation by the plaintiffs, violated the plaintiffs' constitutional rights under the first, fifth and fourteenth amendments to the United States constitution; and (3) whether operational control of the commission's enforcement activities by a dominant majority of legislative political appointees,

> as provided by General Statutes §§ *9-7a* and *9-7b*, violates Connecticut's separation of powers doctrine. We conclude that: (1) § *9-333w* is constitutional; (2) the alleged delay did not violate the plaintiffs' constitutional rights; and (3) §§ *9-7a* and *9-7b* do not violate our separation of powers doctrine. Accordingly, we affirm the trial court's judgment.

The discussion of the issues presented on this petition then consumes twenty-two pages of the majority opinion (Opinion pages 83-105; Appendix, pages A-5–A-24).

The Connecticut Supreme Court Minority Opinion

The dissenting opinion consumes four pages (Opinion pages 109-113; Appendix A-28–A-32), and concentrates entirely on the *free speech* issue, summed up succinctly as follows:

> History teaches us that a stringent control of political debate on a minute formal point, without any relationship to the dangers of money controlling democratic government, presents a grave threat to our liberties.
>
> * * *
>
> Free elections and the vigorous debate essential to them are the essence of our republic. That is why freedom of speech was protected in the first amendment in 1791. Seymour's seeking public office against entrenched political parties in a small Connecticut town was entitled to protection from undue interference by the commission. I find the statute as applied violated that right.

(255 Conn. 78 at pp. 112-113)

REASONS FOR ALLOWANCE OF WRIT

The Connecticut Supreme Court, as state court of last resort, has decided important federal questions in a way that conflicts with relevant decisions of the United States Supreme Court.

The United States Supreme Court recognized in *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) that anonymous

speech (*i.e.*, the type of speech penalized by the statute at issue here) holds an honored place in the history of American political discourse (at 357). While the majority of the Connecticut Supreme Court paid lip service to *McIntyre*, the practical effect of the decision below is to virtually nullify any right of anonymous speech for individuals connected with an election campaign. The decision of the Connecticut Supreme Court interprets *McIntyre* in the narrowest possible fashion and effectively limits that landmark case to its particular facts.

The majority opinion distinguished *McIntyre* on the ground that supporters of a candidate for political office have no reason to fear retaliation or social ostracism from public disclosure of their support:

> Candidates, by their very nature, hope to gain support by aligning themselves with particular issues. This process necessarily calls for one to identify a named candidate, with that candidate's public views. Thus, when candidate speech is involved, fears of "retaliation" or "social ostracism" are severely limited. A *per se* right to anonymity in this situation simply would be untenable.

Seymour, 225 Conn. at 100.

Anonymity, however, can be *even more important* to supporters of challengers in local elections than in statewide or national campaigns — municipal incumbent officeholders have a wide range of powers to punish individuals who challenge their control of the machinery of government: *e.g.* increased tax assessments, denials of permits, repeated visits by building and health inspectors, failure to maintain roads, public humiliation in town meetings — the opportunities are limitless. Fear of reprisals is one of the greatest weapons open to incumbents to protect their hold on municipal offices. The basic purpose behind the Bill of Rights is to protect individuals against exactly such retaliation.

This case presents fundamental constitutional issues affecting democratic process in every small town in America. Elections at this level are the most basic form of practical politics that exists. Voters have almost daily contact with their local

elected officials. Political party committees frequently join forces to protect incumbents and keep reform-minded challengers from weakening their hold on the machinery of government. Hand-picked candidates often change their own party enrollments in order to occupy offices required by statute to be divided between major parties. Licensing, inspections, zoning decisions, tax assessments and even road mending are available weapons for swift reprisal against citizens who challenge or offend incumbent town officials.[2] Shouting matches and personal abuse and humiliation sometimes take place at town meetings and public hearings. Grudges between neighbors can last for years — even generations.

The small town election is democracy in the raw, where protection of constitutional free speech is put to its severest test, and where strategic use of election rules and enforcement agencies like respondent can develop into absolute tyranny. Until one actually experiences local politics, it is difficult for most people to understand that local elections are far different from Presidential elections; gubernatorial races; congressional and even legislative contests. Those races bear no resemblance to the harsh realities of small town politics and the power of small town newspapers. This is democracy's frontier, where small incidents like the publicizing of a complaint alleging a minor violation filed with a state election law enforcement agency can determine success or failure at the polls.

The facts of this case present a classic example of how local political organizations can join forces to use the state election law technicalities to protect their hold on local offices (and town jobs, power, patronage, perks and related benefits that go with them).

That is why the constitutional issues presented by this case are so important and deserve review by this Court.

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[2] A septic tank violation filed by a town inspector can cost a home owner tens of thousands of dollars.

ARGUMENT

POINT I

SECTION 9-333w(a) IS VOID AS OVERBROAD UNDER THE FIRST AMENDMENT

Contrary to the implication of the majority opinion of the Connecticut Supreme Court, the right to full exercise of freedom of speech is not suspended during a candidate election. This "constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976). When the State decides to place restrictions on free political speech through election law technicalities, the Courts must subject such statutes to "'exacting scrutiny'" and "uphold the restriction only if it is narrowly tailored to serve an overriding state interest." *McIntyre*, 514 U.S. at 347 (citations omitted).

The majority's error below was to focus on disclosure requirements of the statute that it believed to be permissible (*i.e.*, solicitation of contributions) and to disregard the substantial number of contexts in which the application of the statute is plainly void. This was a direct violation of the doctrine of "overbreadth" which "reflects a constant of our free speech jurisprudence that claimants whose First Amendment rights are affected may challenge a statute not merely on the ground that its specific application to them is unconstitutional, but also that its application *is void in a substantial number of other contexts that arguably fall within its scope*." *Morse v. Republican Party of Va.*, 517 U.S. 186, 241-42 (1996) (Scalia, J. dissenting) (emphasis added.)[3] The following are examples of contexts in which the State has no compelling interest in curtailing free speech by requiring a "paid for by"

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[3] The majority in *Morse* also recognized the continued vitality of the overbreadth doctrine. *See Morse*, 517 U.S. at 229, n. 38 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)).

attribution, but which nonetheless fall within the broad sweep of Section 9-333w.[4]

1. The Statute is Overbroad Because It Applies to Expenditures by the Candidates Themselves

The State Supreme Court majority opinion found that Section 9-333w served a compelling state interest in "avoiding corruption that might result from campaign expenditures" *Seymour*, 255 Conn. at 88. Obviously, as a matter of common sense, this concern only comes into play when *someone else* expends money on a candidate's behalf, not where, as here, candidates *expend their own money*. Because the statute applies to "self funded" expenditures, where there is no risk of a *quid pro quo*, it is obviously overbroad.[5]

2. The Statute Applies to Negligible Expenditures

As the dissenting opinion noted, the statute here was interpreted to require disclosure regarding the "cost of three pieces of paper and the ink used in printing the releases and the cost (if any) of six local telephone calls — mere pennies." *Seymour*, 255 Conn. at 109. (McDonald, C.J., with Sullivan, J., dissenting.) There is no conceivable enforcement, informational, or corruption-combating interest in disclosing the source of such paltry sums.

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[4] To the extent these examples are based on plaintiffs' specific circumstances, they also show why the statute is unconstitutional as applied in this case.

[5] The majority opines that the attribution requirement is valid for "self-funded" campaigns because it "provides the commission with *another way* to ensure that campaign literature is funded, not from third parties, but from candidates themselves." *Seymour*, 255 Conn. at 90 (emphasis added.) The test, however, is whether a statute is "narrowly tailored" not whether it provides an additional, redundant enforcement weapon. Plainly, the same goal can be accomplished with a less restrictive statute applicable only to contributions by so-called "third-parties."

3. The Statute Applies to Non-Organization Candidates Subject to Harassment

The statute was applied in this case to reform-minded citizens challenging "business as usual" politics by entrenched politicians. Because reform challengers do not have the financial and logistical backing of the party organizations, and because they are often virtually alone in opposing the political powers that be, these reformers stand in the shoes of "minor political party candidates" who are "subject . . . to threats, harassment, or reprisals from either government officials or private parties." *Buckley v. Valeo*, 424 U.S. 1, 74 (1976). The Supreme Court has made clear that election laws should not be enforced in a way that will inhibit the exercise of the right of free political expression by such political outsiders.

4. The Statute Applies to Speech That Is Not Even Arguably False

The statute here is also overbroad because it places restrictions on speech which is "not even arguably false and misleading." *McIntyre*, 514 U.S. at 351. Plainly, the State has no legitimate interest in controlling or restricting citizens' access to the truth.

POINT II

DUE PROCESS BENEFITS THE ELECTORATE AS WELL AS THE CANDIDATES

The State Supreme Court majority gave short shrift to petitioners' argument that the *State* itself should not be permitted to mislead the electorate, by delaying resolution of often unfounded — but highly publicized — charges of campaign violations, many of which are dismissed after the election. (*Seymour*, *supra*, at *11-*12.) (A-22–A-24) Due process considerations require either that politically-motivated charges not be publicized until they are independently adopted by the agency based on a finding of probable cause; or that an agency hearing on the merits be held on an expedited basis — before election day.

In its opinion, the State Supreme Court majority emphasizes the *state's* right to protect the electorate by preventing candidates and other citizens from distributing misleading, false or inaccurate information. *Seymour*, 255 Conn. at 93 (noting that "during election campaigns . . . false statements, if credited, may have serious adverse consequences for the public at large.") (*quoting McIntyre*, 514 U.S. at 349.) However, *unfounded* charges against candidates present a much greater danger of misleading or misinforming the electorate, because they bear the stamp of government approval.[6]

CONCLUSION

This case underscores one of the most pervasive problems in America: the difficulty of encouraging more citizens to become involved in local politics and to overcome fear of reprisals by the established political powers. The majority opinion of the Connecticut Supreme Court, by encouraging entrenched political organizations to misuse election laws to punish reform-minded challengers and their supporters, can only generate more political alienation and apathy on the part of citizens. The three-Justice majority's failure to consider the realities of actual small town election process, or acknowledge the easy steps that could be taken to *prevent* repetition of the constitutional abuses present here,[7] warrants the

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[6] It is no answer to state — as the State Supreme Court majority does — that the statute provides for continuing investigations by the Commission "regardless of time frame." *Seymour*, 255 Conn. at 104. That is the very flaw which makes the statute unconstitutional under the First, Fifth and Fourteenth Amendments, by allowing investigations of unfounded charges to drag out past election day.

[7] In affirming the trial court's decision, the majority opinion of the Connecticut Supreme Court gives inadequate attention to the available simple steps that could be taken by the Commission and by the Legislature to remedy the constitutional problems. For example:

(a) Section 9-333w(a) could easily be amended to protect constitutional rights by adding an exemption for *self-funded candidate elections* and by setting *a reasonable minimum dollar amount for expenditures* that must be identified as to "paid by" sources (*e.g.*, $500 or $1,000 — not pennies, as in this case).

granting of the writ and review of that court's decision by the Supreme Court.

Dated: New Haven, Connecticut
May 1, 2001

DAVID R. SCHAEFER*
BRENNER, SALTZMAN
& WALLMAN, LLP
Attorneys for Petitioners
271 Whitney Avenue
New Haven, CT 06507-1746
(203) 772-2600

WHITNEY NORTH SEYMOUR, JR.
PETER JAMES CLINES
LANDY & SEYMOUR
363 Seventh Avenue, Room 1300
New York, NY 10001
(212) 629-0590
Of Counsel

* *Counsel of Record*

(b) Any inadequacy in common law causes of action for libel and fraud can be easily corrected by legislative passage of a criminal statute patterned on the Ohio law that provided grounds for the United States Supreme Court's decision in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995). This solution would be far less intrusive on valuable First Amendment freedoms than the present offending provisions of Connecticut's s section 9-333w.

The Connecticut Supreme Court — while professing to apply strict scrutiny — distinguished *McIntyre* in this latter regard, by stating that Ohio already had such a criminal statute while Connecticut did not; thus, in the court's view, no less restrictive alternative existed in this jurisdiction. (255 Conn. at p. 94) The Court thereby took the extraordinary (and, to petitioners' best knowledge, unprecedented) position that a state can satisfy strict scrutiny's least-restrictive-alternative requirement simply by declining to adopt one.